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olen State of Misconsin 2011 - 2012 LEGISLATURE



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to amend 227.03 (5), 775.05 (2) to (4) and 775.05 (5); and to create 227.43

(1) (bw), 301.051, 775.05 (4m) and (4r), 808.085 and 977.05 (4) (jr) of the statutes; relating to: resolution of claims against the state for wrongful

Analysis by the Legislative Reference Bureau

imprisonment of innocent persons.

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board

-evidence

must refer the petition to the Division of Hearings and Appeals in the Department of Administration. The bill allows the petitioner to be represented by a public defender. The division then appoints a hearing examiner to hear the petition, who makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the

Ilmit on the amount of compensation is necessed to a rate of \$50,000 per year and there is no limit on the total amount of an award. The \$50,000 km is subject to annual adjustment is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC), and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill initially applies with respect to claims filed by persons who are released on the day the bill becomes law from imprisonment for crimes of which they claim to be innocent.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 227.03 (5) of the statutes is amended to read:

227.03 (5) This chapter does not apply to proceedings of the claims board, except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2), and except that proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in

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5 s. 775.05.

1	SECTION 2.	227.43 (1) (by	w) of the	statutes i	is created	to read:

227.43 (1) (bw) Assign a hearing examiner to preside over each hearing conducted under s. 775.05.

Section 3. 301.051 of the statutes is created to read:

301.051 Wrongful conviction; transition plan. Not more than 5 days after a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a), the department shall create and implement a transition to release plan for the inmate. The plan shall do all of the following:

(1) Provide the inmate with a written list of community resources available to the inmate upon his or her release from prison, including temporary housing and emergency shelters, food banks, education and job assistance, and health care services in the county into which the inmate will be released. The department shall maintain up to date lists with contact information for each county in the state.

(2) Provide the inmate with individual counseling with a person trained by the or the county into which the inmate will be released department to assist inmates in the transition to release from prison.

> SECTION 4. 775.05 (2) 6 4 of the statutes are amended to read:

775.05 (2) Any person who is imprisoned as the result of his or her conviction

for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, may petition the claims board for compensation for such imprisonment. Upon Within 5 days after receipt of the petition, the claims board department of administration shall transmit a copy thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner for the conviction which is the subject of the claim, or their successors in office, for the information of these persons.

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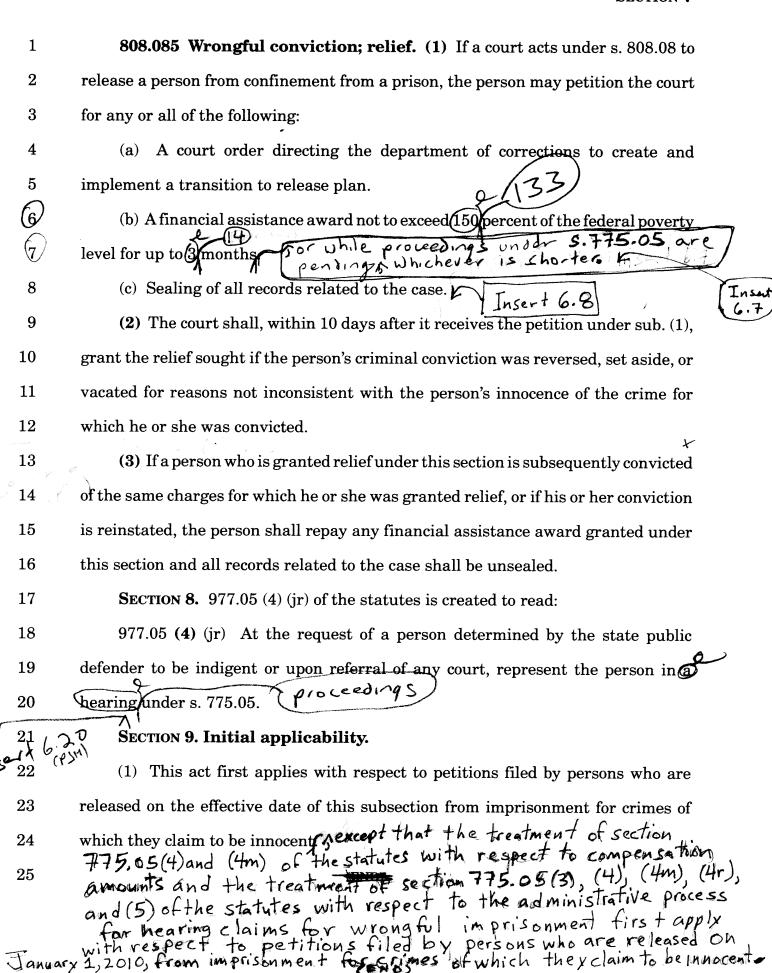
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5 (4) S (3) and (4)

3) Upon receipt of a petition under sub. (2) the department of administration shall promptly refer the petition to the division of hearings and appeals. The division shall hear the evidence on the petition. After hearing the evidence on the petition, the claims board, the division shall find either that the preponderance of evidence is clear and convincing demonstrates that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the preponderance of evidence is not clear and convincing does not demonstrate that he or she was innocent.

If the claims board division of hearings and appeals finds that the preponderance of evidence demonstrates that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board of the crime for which he or she was imprisoned, the division shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 \$50,000, or the amount determined under sub. (4m), whichever applies, per year, for the imprisonment. Compensation awarded by the claims board In addition, the division shall include find any amount to which the board finds the petitioner is entitled for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The division shall subtract any moneys received by the petitioner under s. 808.085. If the claims board division finds that the amount it is able to award find is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion of the proceeding.

1	the division shall transmit its findings and decision to the claims board, which shall
2	award the compensation specified in the decision and order disbursement of the
3	award to the petitioner from the appropriation under s. 20.505 (4) (d).
4	Section 5. 775.05 (4m) and (4r) of the statutes are created to read:
5	775.05 (4m) On April 1 of each year, the claims board shall adjust the
6	maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
7	price index for all urban consumers, U.S. city average, as determined by the U.S.
8	department of labor, for the 12-month period ending on the preceding December 31.
9	The board shall publish the adjusted amount so determined in the Wisconsin
10	administrative register.
11	(4r) At any hearing conducted under this section, the petitioner may be
12	represented by counsel of his or her own choosing. The department of administration
13	shall represent the interests of the state. The petitioner may submit a brief to the
14	hearing examiner no later than 30 days after the date of filing of the petition with
(15	the claims board under sub. (2) and the department may reply no later than 30 days
16	after the date of filing of the petitioner's brief. The hearing shall be held no later than
17	80 days after the date that the petition is filed under sub. (2) or the last brief is filed 1.4
18	yunfess the hearing examiner sets a later date with the consent of da whichever is later. The hearing examiner shall issue a decision no later than 60 days
19	after the date that the hearing is held. SECTION 6. 775.05 (5) of the statutes is amended to read: Detitioner
20	SECTION 6. 775.05 (5) of the statutes is amended to read:
21	775.05 (5) The claims board shall keep a complete record of its the proceedings
22	in each ease petition under this section and of all the evidence related to the petition.
23	The findings and decision of the division of hearings and appeals and the award of
24	the claims board shall be subject to review as provided in ch. 227.
25	SECTION 7. 808.085 of the statutes is created to read:



2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

INS 2A:

The bill provides that no person may file a claim for wrongful imprisonment as a result of his or her conviction for a crime if the person is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

INS 3-24:

X

SECTION 1. 775.05 (2) (b) of the statutes is created to read:

775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

INSERT 2.1: financial assistance

SECTION 1. 20.505 (4) (d) of the statutes is amended to read:

20.505 (4) (d) Claims awards. A sum sufficient for payment of awards made by the claims board or department of administration under ss. 16.007, 775.05 (4), 775.06 and 775.11, awards of stipends under s. 808.085, and awards made by an act of the legislature arising from a claim filed with the claims board which are not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 206, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 37; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692, 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2xt), (2xu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 680d to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2494, 2495, 9401, 9409; 2005 a. 60, 124, 141, 142, 253, 344, 414, 433; 2007 a. 20 ss. 323, 326, 516e to 542g, 9121 (6) (a); 2007 a. 226; 2009 a. 11, 28, 302, 318; s. 13.92 (2)

INSERT 3.14:

(3) Schedule an appointment, set for not later than 2 weeks after the inmate's date of release, with a social worker or aid program administrator for the county into which the inmate will be released.

INSERT 6.7:

Financial assistance received pursuant to this section may not affect the person's eligibility for aid or assistance under any other state program.

INSERT 6.8:

Records sealed under this section shall be accessible to the person but may not be available for public inspection or through the consolidated court automation program case management system.

INSERT 6.20:

SECTION 2. 977.05 (4) (jw) of the statutes is created to read:

977.05 (4) (jw) At the request of an inmate determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 808.085.

Kuesel, Jeffery

From:

Hurley, Peggy

Sent:

Thursday, July 14, 2011 10:56 AM Wavrunek, Glenn; Kuesel, Jeffery

Cc:

Shovers, Marc

Subject:

RE: LRB-0066/P2: Treatment of Wrongfully Convicted People

Friday works for me; Monday may be a little dicey with the scheduled sessions. If point IV is out, the only other provision that may need some input from another drafter is the tax exempt status of compensatory awards. I am including Marc Shovers in this email because I think he would be the appropriate drafter for that issue.

Peggy

From:

Wavrunek, Glenn

Sent:

Thursday, July 14, 2011 10:49 AM Kuesel, Jeffery; Hurley, Peggy

To: Subject:

RE: LRB-0066/P2: Treatment of Wrongfully Convicted People

Just got off the phone with Keith ... he's open after 3:00 on Monday (7/18) or all day Friday (7/22); Friday would probably work better on my end. Do any of these dates work for the two of you?

Also, Keith agrees with me now -- we'll be dropping point IV. Thanks!

-glenn

From:

Wavrunek, Glenn

Sent:

Wednesday, July 13, 2011 3:59 PM

To: Subject: Kuesel, Jeffery; Hurley, Peggy LRB-0066/P2: Treatment of Wrongfully Convicted People

Jeff and Peggy -

Below are some additional thoughts on the bill draft ... this should do it, and if you have any questions, please let me know. Thanks!

Glenn Wavrunek Office of Rep. Mark Pocan

We have reviewed the preliminary draft of the Act relating to resolution of claims against the state for wrongful imprisonment of innocent persons. We are generally very pleased with this draft and think it is almost there, as far as we are concerned. We do have a few suggestions, however, for minor changes. Some of these reflect changes in our own thinking since we last met. We have identified five central concerns with respect to the Act as currently written. They are outlined below.

I. The Act as written mandates too much procedure for all claims, regardless of whether they are opposed by the state.

As currently written, Section 7 of the Act amends § 775.05(3) to read that the department of administration "shall promptly refer the petition to the division of hearings and appeals. The division shall hear the evidence on the petition." We initially thought this made sense, but have since learned that in some states making the process too formal can actually be counter-productive. In particular, not all claims for compensation are opposed by the state, as indeed some innocence claims are uncontroverted. By requiring a hearing on every claim, regardless of whether it is in question or opposed in any way, the Act may cause unnecessary delay and could burden the division with hearings that serve no real purpose.

As such, we recommend altering the language of Section 7 to reflect that the mandatory hearing procedure need occur only when there exists opposition to the claim of innocence. This would ensure that hearings are held only when necessary and would avoid indiscriminate imposition of burdensome procedures in cases where such procedures would be merely a formality.

II. The Act unnecessarily increases the length of the petition process by creating a briefing schedule.

In Section 8, the Act creates statute § 775.05(4r) to read that "[t]he petitioner may submit a brief to the hearing examiner no later than 30 days after the date of filing of the petition . . . and the department may reply no later than 30 days after the date of filing of the petitioner's brief." It then states that the hearing shall be held no later than 60 days after the petition is filed or 30 days after the filing of the last brief, "whichever is later." We discussed these briefing schedules at the last meeting, and agreed on the time limits. Upon reflection, however, we think it better not to micro-manage any litigation in this manner, because, again, it may be requiring more burdensome and lengthy procedure than is necessary in many cases.

This imposition of additional procedure could result in additional delays to the already-arduous process of receiving compensation for wrongful imprisonment. As such, we recommend removing any language about briefing schedules and the language allowing additional time when briefs have been filed in a case. Instead, the Act should impose the 60-day deadline for a hearing date in all cases, regardless of whether either party chooses to file a brief. As briefing is always available to the parties in cases like this if the judge finds it necessary, there is no need to build in an expectation and timeline for briefing in every case. To remove this language would actually make the process more similar to the kinds of procedures that circuit courts routinely employ. In post-conviction proceedings challenging convictions in circuit court, for example, the statutes do not specify any schedule (or expectation) for briefing in every case. They instead leave it up to the court whether to require or permit briefs in each individual case. And they make no allowance for additional time for briefing; Wis. Stat. § 809.30, for example, simply provides that the court must decide a motion for a new trial within 60 days. We think that simpler approach makes sense here as well. Briefing schedules are usually imposed by statute or rule only in appeals in appellate courts, not in trial-level proceedings such as these.

III. The Act does not provide that compensation will be tax-exempt. AS-1680K.

It is important that Wisconsin recognize, as other states have recognized, that the compensation awards granted to the wrongfully imprisoned are not income and should not be taxed as such. By making compensation awarded under § 775.05 tax-exempt, we will ensure that the economic burden of a wrongful conviction is ameliorated to the fullest extent possible.

As it is written now, the Act does not specify that any compensation awarded under § 775.05 is tax-exempt. We recommend including language within the Act, wherever you deem most appropriate, to make its tax-exempt status unambiguous.

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IV. The Act should include provision of health insurance for some set amount of time as part of the relief granted.

As currently written, the Act offers various services to petitioners but does not provide for health insurance coverage. We suggest that the Act include a provision granting petitioners insurance coverage as part of a statewide program for some set period of time, notwithstanding their income level, employment status or other qualifying factors.

We believe the best option would be to emulate Vermont's Wrongful Conviction statute, 13 V.S.A. § 5574(b)(2) (2011). This statute provides that a damage award may include up to ten years of eligibility for the Vermont Health Access Plan using state-only funds. While other states have approached this issue differently, Vermont offers the most comprehensive solution to the problem of health care that the wrongfully convicted may face after release.

We would be happy to discuss this recommendation further with you or perform additional research on specifics, if you believe it would be helpful.

JK

V. The Act as written forecloses the possibility of compensation for those who were wrongfully incarcerated prior to its passage.

Currently, Section 13 of the Act provides that it first applies "with respect to petitions filed by persons who are released on the effective date of this subsection from imprisonment[.]" However, there are people who have suffered through wrongful convictions and have not yet been compensated. Likewise, there are at least three people in Wisconsin who have received compensation under the old statute within the last five years, the amount of which is grossly inadequate. They should not be foreclosed from petitioning for compensation merely because their exoneration took place before the enactment of this reform legislation.

Therefore, we recommend altering Section 13 to read that the act first applies "with respect to petitions filed on the effective date of this subsection" and allows those exonerated during or after the year 2006 to file for compensation. We also recommend drafting additional language that makes clear that those who have received compensation under the old statute may petition for additional relief to bring their award up to appropriate levels. This will not monetarily burden the state, as a limited number of people are eligible to petition for compensation. Indeed, based on our assessment of the compensation awards previously paid to these three exonerees and the increased sums this statute would make available to them, at the most, it will require an additional \$1.75 million.

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Thomas order 775 + interin assistance for purposes of - housing - soud service assistance, incl health insurance talk w/ Pam - sheill give me language to phy into 808.085 and 775. OR make request a 1 result how for the federal law of determines a warrer 2 approaches Qs: - which approach?
- 7 Incores gettes awards? - Win show 19? 25 stacked onto

briefing schedules and the language allowing additional time when briefs have been filed in a case. Instead, the Act should impose the 60-day deadline for a hearing date in all cases, regardless of whether either party chooses to file a brief. As briefing is always available to the parties in cases like this if the judge finds it necessary, there is no need to build in an expectation and timeline for briefing in every case. To remove this language would actually make the process more similar to the kinds of procedures that circuit courts routinely employ. In post-conviction proceedings challenging convictions in circuit court, for example, the statutes do not specify any schedule (or expectation) for briefing in every case. They instead leave it up to the court whether to require or permit briefs in each individual case. And they make no allowance for additional time for briefing; Wis. Stat. § 809.30, for example, simply provides that the court must decide a motion for a new trial within 60 days. We think that simpler approach makes sense here as well. Briefing schedules are usually imposed by statute or rule only in appeals in appellate courts, not in trial-level proceedings such as these.

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Sent: To: Subject: Wednesday, July 13, 2011 3:59 PM

Kuesel, Jeffery; Hurley, Peggy

LRB-0066/P2: Treatment of Wrongfully Convicted People

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Glenn Wavrunek Office of Rep. Mark Pocan 1250

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As currently written, Section 7 of the Act amends § 775.05(3) to read that the department of administration "shall promptly refer the petition to the division of hearings and appeals. The division shall hear the evidence on the petition." We initially thought this made sense, but have since learned that in some states making the process too formal can actually be counter-productive. In particular, not all claims for compensation are opposed by the state, as indeed some innocence claims are uncontroverted. By requiring a hearing on every claim, regardless of whether it is in question or opposed in any way, the Act may cause unnecessary delay and could burden the division with hearings that serve no real purpose.

As such, we recommend altering the language of Section 7 to reflect that the mandatory hearing procedure need occur only when there exists opposition to the claim of innocence. This would ensure that hearings are held only when necessary and would avoid indiscriminate imposition of burdensome procedures in cases where such procedures would be merely a formality.

II. The Act unnecessarily increases the length of the petition process by creating a briefing schedule.

In Section 8, the Act creates statute § 775.05(4r) to read that "[t]he petitioner may submit a brief to the hearing examiner no later than 30 days after the date of filing of the petition . . . and the department may reply no later than 30 days after the date of filing of the petitioner's brief." It then states that the hearing shall be held no later than 60 days after the petition is filed or 30 days after the filing of the last brief, "whichever is later." We discussed these briefing schedules at the last meeting, and agreed on the time limits. Upon reflection, however, we think it better not to micro-manage any litigation in this manner, because, again, it may be requiring more burdensome and lengthy procedure than is necessary in many cases.

This imposition of additional procedure could result in additional delays to the already-arduous process of receiving compensation for wrongful imprisonment. As such, we recommend removing any language about

Finally, do you want both s. 775.05 awards and any interim assistance granted under s. 808.085 to be tax-exempt? Your initial note only specified s. 775.05 awards, and it may be that people who receive interim assistance wouldn't be paying income tax anyway, but I wanted to clarify that point as well. Thanks!

Peggy Hurley Legislative Reference Bureau 608 266 8906

Hurley, Peggy

From: Kahler, Pam

Sent: Tuesday, August 02, 2011 1:20 PM

To: Hurley, Peggy

Subject: RE: Public assistance

I think that looks good.

From: Hurley, Peggy

Sent: Tuesday, August 02, 2011 1:12 PM

To: Kahler, Pam

Subject: Public assistance

Hi Pam,

Does this language work, in your opinion? I'm simply adding a new paragraph to the statute that grants interim relief payments:

INSERT PJH:

"(4) To the extent it is not contrary to or inconsistent with federal law, financial assistance a person receives pursuant to this section may not be included as income for the purposes of determining the person's eligiblity for any program for which the department of health services or the department of children and families provides services, benefits, or other assistance under chapter 49."

Peggy Hurley Legislative Reference Bureau 608 266 8906

Hurley, Peggy

From:

Wavrunek, Glenn

Sent:

Tuesday, August 02, 2011 10:23 AM

To:

Hurley, Peggy

Cc:

Kuesel, Jeffery; Shovers, Marc; Kahler, Pam

Subject: RE: eligibility for assistance and tax exemption So, spoke to folks and here is where we're at:

Interim Award -

Tax exempt and none of the money received at this point can be used to disqualify you from any public assistance program.

Lump Sum Award -

Tax exempt and and money received can be treated as income when seeing if you qualify for an public assistance program. However, when it comes to health care, we will follow the lead of Vermont and Texas where individuals will be allowed to be part of the state employee health plan for 10 years, and as such, will be treated as a state employee when it comes to health care when it comes to monthly contribution, co-pays, etc (clock would start ticking upon receiving the lump sum award).

Work for you? Please feel free to call if I did a bad job explaining this. Thanks!

-glenn

From: Hurley, Peggy

Sent: Friday, July 22, 2011 3:05 PM

To: Wavrunek, Glenn

Cc: Kuesel, Jeffery; Shovers, Marc; Kahler, Pam Subject: eligibility for assistance and tax exemption

Hi Glenn.

To clarify a point of discussion: when we discussed ensuring that an award wouldn't affect an exoneree's eligibility for insurance or other assistance, did you mean to ensure only that the "interim" assistance granted under s. 808.085 didn't disqualify the person, or did you mean that no award, including those granted after a s. 775.05 hearing, should disqualify a person from receiving assistance?

look at11-2303 for new Alanguage

When I left the meeting, I thought you meant that neither the interim nor the ultimate compensatory award should disqualify the person from receiving assistance, but now that I think about it, perhaps making that apply to only the interim assistance makes the most sense. The interim assistance is limited to 133% of the federal poverty level and only continues for 14 months or until the s. 775.05 hearing is concluded. The interim assistance wouldn't amount to all that much, but there is the concern that it could be just enough to make people ineligible for the kind of public assistance they'd need when they are released. On the other hand, a s. 775.05 award could be substantial - is it your intent that, no matter how much money a person may receive after a s.775.05 hearing, he or she should still qualify for public assistance programs? We can draft the bill either way - I just wanted to make sure I understand your intent.



State of Misconsin 2011 - 2012 LEGISLATURE



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT *to renumber and amend* 775.05 (2); *to amend* 20.505 (4) (d), 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and *to create* 227.43 (1) (bw), 301.051, 775.05 (2) (b), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4) (jw) of the statutes; **relating to:** resolution of claims against the state for wrongful

Analysis by the Legislative Reference Bureau

imprisonment of innocent persons/and making an appropriation.

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and

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The will then allows either.

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ims board for a hearing wi who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petiton to the Division of Hearings and Appeals in the Department of Administration. The bill allows the petitioner to be represented by a public defender. The division the appoints a hearing examiner to hear the petition who makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment as a result of his or her conviction for a crime if the person is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC), and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from

any compensation he or she receives for wrongful imprisonment.

The bill initially applies with respect to claims filed by persons who are released on the day the bill becomes law from imprisonment for crimes of which they claim to be innocent.

7 For further information see the *state and local* fiscal estimate, which will be

printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 20.505 (4) (d) of the statutes is amended to read:

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1	20.505 (4) (d) Claims awards. A sum sufficient for payment of awards made
2	by the claims board or department of administration under ss. 16.007, 775.05 (4),
3	775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made
4	by an act of the legislature arising from a claim filed with the claims board which are
5	not directed by law or under s. 16.007 (6m) to be paid from another appropriation.
6	SECTION 2. 227.03 (5) of the statutes is amended to read:
^{^1} 7	227.03 (5) This chapter does not apply to proceedings of the claims board,
8	except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2), and except that
9	proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
10	<u>s. 775.05</u> .
11	Section 3. 227.43 (1) (bw) of the statutes is created to read:
12	227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
13	conducted under s. 775.05.
14	Section 4. 301.051 of the statutes is created to read:
15	301.051 Wrongful conviction; transition plan. Not more than 5 days after
16	a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
17	the department shall create and implement a transition to release plan for the
18	inmate. The plan shall do all of the following:
19	(1) Provide the inmate with a written list of community resources available to
20	the inmate upon his or her release from prison, including temporary housing and
21	emergency shelters, food banks, education and job assistance, and health care
22	services in the county into which the inmate will be released. The department shall
23	maintain up to date lists with contact information for each county in the state.

1	(2) Provide the inmate with individual counseling with a person trained by the
2	department or the county into which the inmate will be released to assist inmates
3	in the transition to release from prison.
4	(3) Schedule an appointment, set for not later than 2 weeks after the inmate's
5	date of release, with a social worker or aid program administrator for the county into
6	which the inmate will be released. \checkmark
7	Section 5. 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and amended
8	to read:
9	775.05 (2) (a) Any Except as provided in par. (b), any person who is imprisoned
10	as the result of his or her conviction for a crime in any court of this state, of which
11	crime the person claims to be innocent, and who is released from imprisonment for
12	that crime after March 13, 1980, may petition the claims board for compensation for
13	such imprisonment. Upon Within 5 days after receipt of the petition, the claims
14	board department of administration shall transmit a copy thereof to the prosecutor
15	who prosecuted the petitioner and the judge who sentenced the petitioner for the
16	conviction which is the subject of the claim, or their successors in office, for the
17	information of these persons.
18	SECTION 6. 775.05 (2) (b) of the statutes is created to read:
19	775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
20	the result of his or her conviction for a felony in any court of this state arising from
21	the same course of conduct that resulted in conviction for the crime of which the
22	person claims to be innocent if the person does not claim to be innocent of that felony.
23	SECTION 7. 775.05 (3) and (4) of the statutes are amended to read: After hearing the statutes are amended to read: 775.05 (3) Upon receipt of a petition under sub. (2) (a), the department of
24	775.05 (3) Upon receipt of a petition under sub. (2) (a), the department of
25	administration shall promptly refer the petition to the division of hearings and
	deportment of ladinguistration or the office of the prosecutor who was responsible for prosecuting the petitioner
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appeals) The division shall/hear the evidence on the petition

when the petition the claims board, the division shall find either that the preponderance of evidence is clear and convincing demonstrates that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the preponderance of evidence is not clear and convincing does not demonstrate that he or she was innocent.

(4) If the claims board division of hearings and appeals finds that the preponderance of evidence demonstrates that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board of the crime for which he or she was imprisoned, the division shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 of \$50,000, or the amount determined under sub. (4m), whichever applies, per year, for the imprisonment. Compensation awarded by the claims board In addition, the division shall include find any amount to which the board finds the petitioner is entitled for reasonable. actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The division shall subtract any moneys received by the petitioner under s. 808.085. If the claims board division finds that the amount it is able to award find is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion of the proceeding, the division shall transmit its findings and decision to the claims

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1	board, which shall award the compensation specified in the decision and order
2	disbursement of the award to the petitioner from the appropriation under s. 20.505
3	(4) (d).
4	SECTION 8. 775.05 (4m) and (4r) of the statutes are created to read:
5	775.05 (4m) On April 1 of each year, the claims board shall adjust the
6	maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
7	price index for all urban consumers, U.S. city average, as determined by the U.S.
8	department of labor, for the 12-month period ending on the preceding December 31.
9	The board shall publish the adjusted amount so determined in the Wisconsin
10	administrative register.
11	(4r) At any hearing conducted under this section, the petitioner may be
12	represented by counsel of his or her own choosing. The department of administration
13	shall represent the interests of the state. The petitioner may submit a brief to the
14	hearing examiner no later than 30 days after the date of filing of the petition with
15	the claims board under sub. (2) (a) and the department may reply no later than 30
16	days after the date of filing of the petitioner's brief. The hearing shall be held no later
17	than 60 days after the date that the petition is filed under sub. (2) (a) or no later than
18	30 days after the date that the last brief is filed, whichever is later, unless the hearing
19	examiner sets a later date with the consent of the petitioner. The hearing examiner
20	shall issue a decision no later than 60 days after the date that the hearing is helds.
21	SECTION 9. 775.05 (5) of the statutes is amended to read:
22	775.05 (5) The claims board shall keep a complete record of its the proceedings
23	in each case petition under this section and of all the evidence related to the petition.
24	The findings and decision of the division of hearings and appeals and the award of
25	the claims board shall be subject to review as provided in ch. 227.

1	SECTION 10. 808.085 of the statutes is created to read:
2	808.085 Wrongful conviction; relief. (1) If a court acts under s. 808.08 to
3	release a person from confinement from a prison, the person may petition the court
4	for any or all of the following:
5	(a) A court order directing the department of corrections to create and
6	implement a transition to release plan.
7	(b) A financial assistance award not to exceed 133 percent of the federal poverty
8	level for up to 14 months, or while proceedings under s. 775.05 are pending,
9	whichever is shorter. Financial assistance received pursuant to this section may not
10	affect the person's eligibility for aid or assistance under any other state program.
11	(c) Sealing of all records related to the case. Records sealed under this section
12	shall be accessible to the person but may not be available for public inspection or
13	through the consolidated court automation program case management system.
14	(2) The court shall, within 10 days after it receives the petition under sub. (1),
15	grant the relief sought if the person's criminal conviction was reversed, set aside, or
16	vacated for reasons not inconsistent with the person's innocence of the crime for
17	which he or she was convicted.
18	(3) If a person who is granted relief under this section is subsequently convicted
19	of the same charges for which he or she was granted relief, or if his or her conviction
20	is reinstated, the person shall repay any financial assistance award granted under
21	this section and all records related to the case shall be unsealed.
22	SECTION 11. 977.05 (4) (jr) of the statutes is created to read:
23	977.05 (4) (jr) At the request of a person determined by the state public
24	defender to be indigent or upon referral of any court, represent the person in
25	proceedings under s. 775.05.

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SECTION 12. 977.05 (4) (jw) of the statutes is created to read:

977.05 (4) (jw) At the request of an inmate determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 808.085.

SECTION 13. Initial applicability.

(1) This act first applies with respect to petitions filed by persons who are 6 released on the effective date of this subsection from imprisonment for crimes of 7 which they claim to be innocent, except that the treatment of section 775.05 (4) and 8 9 (4m) of the statutes with respect to compensation amounts and the treatment of section 775.05 (3), (4), (4m), (4r), and (5) of the statutes with respect to the 10 administrative process for hearing claims for wrongful imprisonment first apply 11 with respect to petitions filed by persons who are released on January 1, 2010, from 12 imprisonment for crimes of which they claim to be innocent?) 13 imprisonment on or after January 1, 2006, and vivi to the effective dite of this subsection, compensation and to the extent

2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

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claims board or legislature. avanted under 0,808,0865

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The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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SECTION 1. 71.05 (6) (b) 48. of the statutes is created to read:

estate, from the claims board under s. 775.05 (4) from the legislature under the process described in s. 775.05 (4) in the taxable year that relates to the year in which the payment is received.

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(2) The treatment of section 71.05 (6) (b) 48. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 48. of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

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2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

Insert RACAnalysis:

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2013. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state.

NSERT RAC SECTION 1. 20.515 (1) (ds) of the statutes is created to read:

20.515 (1) (ds) Payment of health insurance premiums for individuals who receive compensation for wrongful imprisonment. A sum sufficient to pay the state's share of premium costs for health care benefits and the cost of administering the benefits for individuals under s. 40.515.

SECTION 2. 20.515 (1) (g) of the statutes is created to read:

20.515 (1) (g) Benefit and coverage payments; health care coverage for individuals who receive compensation for wrongful imprisonment. All moneys received from individuals under s. 40.515 who elect to be included in a health care coverage plan under s. 40.51 (6), for the payment of benefits and the cost of administering benefits for the individuals.

SECTION 3. 40.51 (1) of the statutes is amended to read:

40.51 (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employees and individuals eligible for health care coverage under s. 40.515 for health care benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

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SECTION 4. 40.515 of the statutes is created to read:

40.515 Health care coverage for individuals who receive compensation for wrongful imprisonment. (1) Beginning on January 1, 2013, any individual who receives compensation under s. 775.05 after the effective date of this subsection [LRB inserts date], may elect coverage under any health care coverage plan offered under s. 40.51 (6).

(2) The individual and the state shall jointly pay the full premium cost of health care coverage and the cost of administering the benefits. The amount that the individual must pay in health insurance premiums shall equal the amount required to be paid by state employees, as determined by the director of the office of state employment relations under s. 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

INSERT PJH:

(4) To the extent it is not contrary to or inconsistent with federal law, financial assistance a person receives pursuant to this section may not be included as income for the purpose of determining whether the person is indigent under rules promulgated under chapter 977 or for the purpose of determining the person's eligiblity for any program for which the department of health services or the department of children and families provides services, benefits, or other assistance under chapter 49.



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State of Misconsin 2011 - 2012 LEGISLATURE



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(Ricen)

AN ACT to renumber and amend 775.05 (2); to amend 20.505 (4) (d), 40.51 (1), 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to create 20.515 (1) (ds), 20.515 (1) (g), 40.515, 71.05 (6) (b) 48., 227.43 (1) (bw), 301.051, 775.05 (2) (b), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4) (jw) of the statutes; relating to: resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, and making an appropriation.

Analysis by the Legislative Reference Bureau

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the

board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to petition the claims board for a hearing within 30 days after the original petition is filed with the board. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing. The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment as a result of his or her conviction for a crime if the person is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2013. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department

(For up to ten years)

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of corrections (DOC), and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

The bill initially applies with respect to claims filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.505 (4) (d) of the statutes is amended to read:

20.505 (4) (d) Claims awards. A sum sufficient for payment of awards made by the claims board or department of administration under ss. 16.007, 775.05 (4), 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made by an act of the legislature arising from a claim filed with the claims board which are not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

Section 2. 20.515 (1) (ds) of the statutes is created to read:

20.515 (1) (ds) Payment of health insurance premiums for individuals who receive compensation for wrongful imprisonment. A sum sufficient to pay the state's share of premium costs for health care benefits and the cost of administering the benefits for individuals under s. 40.515.

SECTION 3. 20.515 (1) (g) of the statutes is created to read:

20.515 (1) (g) Benefit and coverage payments; health care coverage for individuals who receive compensation for wrongful imprisonment. All moneys

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received from individuals under s. 40.515 who elect to be included in a health care coverage plan under s. 40.51 (6), for the payment of benefits and the cost of administering benefits for the individuals.

SECTION 4. 40.51 (1) of the statutes is amended to read:

40.51 (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employees and individuals eligible for health care coverage under s. 40.515 for health care benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

Section 5. 40.515 of the statutes is created to read:

- 40.515 Health care coverage for individuals who receive compensation for wrongful imprisonment. (1) Beginning on January 1, 2013, any individual who receives compensation under s. 775.05 after the effective date of this subsection [LRB inserts date], may elect coverage under any health care coverage plan offered under s. 40.51 (6).
- (2) The individual and the state shall jointly pay the full premium cost of health care coverage and the cost of administering the benefits. The amount that the individual must pay in health insurance premiums shall equal the amount required to be paid by state employees, as determined by the director of the office of state employment relations under s. 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

Section 6. 71.05 (6) (b) 48. of the statutes is created to read:

71.05 (6) (b) 48. Any amount received by an individual, or the individual's estate, from the claims board under s. 775.05 (4), from the legislature under the process described in s. 775.05 (4), or from a financial assistance award granted under

1	s. 808.085, in the taxable year that relates to the year in which the payment is
2	received.
3	SECTION 7. 227.03 (5) of the statutes is amended to read:
4	227.03 (5) This chapter does not apply to proceedings of the claims board,
5	except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2), and except that
6	proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
7	<u>s. 775.05</u> .
8	SECTION 8. 227.43 (1) (bw) of the statutes is created to read:
9	227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
10	conducted under s. 775.05.
11	SECTION 9. 301.051 of the statutes is created to read:
12	301.051 Wrongful conviction; transition plan. Not more than 5 days after
13	a court issues an order for a plan requested by an inmate pursuant to $808.085(1)(a)$,
14	the department shall create and implement a transition to release plan for the
15	inmate. The plan shall do all of the following:
16	(1) Provide the inmate with a written list of community resources available to
17	the inmate upon his or her release from prison, including temporary housing and
18	emergency shelters, food banks, education and job assistance, and health care
19	services in the county into which the inmate will be released. The department shall
20	maintain up to date lists with contact information for each county in the state.
21	(2) Provide the inmate with individual counseling with a person trained by the
22	department or the county into which the inmate will be released to assist inmates
23	in the transition to release from prison.

(3) Schedule an appointment, set for not later than 2 weeks after the inmate's date of release, with a social worker or aid program administrator for the county into which the inmate will be released.

SECTION 10. 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and amended to read:

775.05 (2) (a) Any Except as provided in par. (b), any person who is imprisoned as the result of his or her conviction for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, may petition the claims board for compensation for such imprisonment. Upon Within 5 days after receipt of the petition, the claims board department of administration shall transmit a copy thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner for the conviction which is the subject of the claim, or their successors in office, for the information of these persons.

SECTION 11. 775.05 (2) (b) of the statutes is created to read:

775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

SECTION 12. 775.05 (3) and (4) of the statutes are amended to read:

775.05 (3) After hearing the evidence on the petition, the claims board Upon receipt of a petition under sub. (2) (a), the department of administration shall promptly refer the petition to the division of hearings and appeals. No later than 30 days after the petition is filed, the department of administration or the office of the prosecutor who was responsible for prosecuting the petitioner may file a petition

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with the claims board for an evidentiary hearing on the petition. The division shall then hold a hearing on the petition no later than 60 days after the petition is filed. If no petition for a hearing is filed within the time specified in this subsection, the division shall decide the matter without a hearing. The division shall find either that the preponderance of evidence is clear and convincing demonstrates that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the preponderance of evidence is not clear and convincing does not demonstrate that he or she was innocent.

If the claims board division of hearings and appeals finds that the preponderance of evidence demonstrates that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the claims board of the crime for which he or she was imprisoned, the division shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 of \$50,000, or the amount determined under sub. (4m), whichever applies, per year, for the imprisonment. Compensation awarded by the claims board In addition, the division shall include find any amount to which the board finds the petitioner is entitled for reasonable. actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The division shall subtract any moneys received by the petitioner under s. 808.085. If the claims board division finds that the amount it is able to award find is not an adequate compensation it shall submit a report specifying an amount which it considers adequate to the chief clerk of each house of the

for any or all of the following:

legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion
of the proceeding, the division shall transmit its findings and decision to the claims
board, which shall award the compensation specified in the decision and order
disbursement of the award to the petitioner from the appropriation under s. 20.505
(4) (d).
SECTION 13. 775.05 (4m) and (4r) of the statutes are created to read:
775.05 (4m) On April 1 of each year, the claims board shall adjust the
maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
price index for all urban consumers, U.S. city average, as determined by the U.S.
department of labor, for the 12-month period ending on the preceding December 31.
The board shall publish the adjusted amount so determined in the Wisconsin
administrative register.
(4r) At any hearing conducted under this section, the petitioner may be
represented by counsel of his or her own choosing. The department of administration
shall represent the interests of the state.
Section 14. 775.05 (5) of the statutes is amended to read:
775.05 (5) The claims board shall keep a complete record of its the proceedings
in each case petition under this section and of all the evidence related to the petition.
The findings and decision of the division of hearings and appeals and the award of
the claims board shall be subject to review as provided in ch. 227.
SECTION 15. 808.085 of the statutes is created to read:
808.085 Wrongful conviction; relief. (1) If a court acts under s. 808.08 to
release a person from confinement from a prison, the person may petition the court

- (a) A court order directing the department of corrections to create and implement a transition to release plan.
- (b) A financial assistance award not to exceed 133 percent of the federal poverty level for up to 14 months, or while proceedings under s. 775.05 are pending, whichever is shorter.
- (c) Sealing of all records related to the case. Records sealed under this section shall be accessible to the person but may not be available for public inspection or through the consolidated court automation program case management system.
- (2) The court shall, within 10 days after it receives the petition under sub. (1), grant the relief sought if the person's criminal conviction was reversed, set aside, or vacated for reasons not inconsistent with the person's innocence of the crime for which he or she was convicted.
- (3) If a person who is granted relief under this section is subsequently convicted of the same charges for which he or she was granted relief, or if his or her conviction is reinstated, the person shall repay any financial assistance award granted under this section and all records related to the case shall be unsealed.
- (4) To the extent it is not contrary to or inconsistent with federal law, financial assistance a person receives pursuant to this section may not be included as income for the purpose of determining whether the person is indigent under rules promulgated under ch. 977 or for the purpose of determining the person's eligibility for any program for which the department of health services or the department of children and families provides services, benefits, or other assistance under ch. 49.

SECTION 16. 977.05 (4) (jr) of the statutes is created to read:

977.05 (4) (jr) At the request of a person determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 775.05.

SECTION 17. 977.05 (4) (jw) of the statutes is created to read:

977.05 (4) (jw) At the request of an inmate determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 808.085.

SECTION 18. Initial applicability.

- (1) This act first applies with respect to petitions filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent. If a person was released from imprisonment on or after January 1, 2006, and accepted compensation from this state for wrongful imprisonment prior to the effective date of this subsection, the person may petition for additional compensation and compensation shall be awarded to the extent payable under section 775.05 of the statutes notwithstanding any release signed by the claimant as a condition precedent to receiving an initial compensation award.
- (2) The treatment of section 71.05 (6) (b) 48. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 48. of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

Kuesel, Jeffery

From:

Wavrunek, Glenn

Sent:

Wednesday, August 10, 2011 2:00 PM

To:

Kuesel, Jeffery; Hurley, Peggy

Subject:

LRB-0066/3: Treatment of Wrongfully Convicted People

Jeff and Peggy -

One more kick at the /3 version of the bill:

This looks really great, with one exception. The new Section 12 (starting on page 6) does, as we suggested, make a hearing necessary only if the DOA or prosecutor requests a hearing, so we don't have to have hearings in uncontested cases. The way it's drafted, however, might have the unintended consequence of denying hearings to applicants who need the hearings to prove their innocence. That is, as drafted, only the state can petition for a hearing. That's ok, but only if the statute makes it clear that an applicant cannot be denied compensation without a hearing. Thus, I propose the following fix (or something like it; changes to the proposed language are represented by red italicized text):

Section 12. 775. 05 (3) and (4) of the statutes are amended to read:

775.05 (3) After hearing the evidence on the petition, the claims board Upon receipt of a petition under sub. (2) (a), the department of administration shall promptly refer the petition to the division of hearings and appeals. No later than 30 days after the petition is filed, the department of administration or the office of the prosecutor who was responsible for prosecuting the petitioner may file a petition demand with the claims board for an evidentiary hearing on the petition. If a hearing is so demanded, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division shall then hold a hearing on the petition no later than 60 days after the petition is filed. If no demand petition for a hearing is filed within the time specified in this subsection, and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division shall decide the matter without a hearing. The division may not deny a petition for compensation without affording the petitioner an opportunity for a hearing. The division shall find either that the preponderance of evidence is clear and convincing demonstrates that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the preponderance of evidence is not clear and convincing does not demonstrate that he or she was innocent.

Note, also, that I suggest changing the request for a hearing to a "demand" rather than a "petition." This is just to make it clear that the references to time limits for a hearing within 60 days after filing a "petition" apply to the petition for compensation, not the request (also called a "petition" in the original draft) for a hearing by the state.

Please let me know if you have any follow-up questions.

Glenn Wavrunek Office of Rep. Mark Pocan